



P R O C E E D I N G S

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THE CLERK: The Honorable David G. Larimer  
presiding. You may be seated. United States of  
America versus Stephen Reed Pattinson, 21-cr-6097.

THE COURT: Good afternoon all.

MR. SLAWINSKI: Good afternoon, Judge.

MR. HARVEY: Good afternoon, Your Honor.

(There was a discussion off the record.)

THE COURT: Okay. So Mr. Slawinski, Mr.  
Harvey, Mr. Pattinson, good afternoon. This matter is  
on for sentencing today. Based on Mr. Pattinson's  
plea back on November 8 to Count One of the indictment  
charging a firearms offense, possession of a firearm  
by a prohibited person, involved two firearms a .30-06  
rifle and a 12 Gauge shotgun. These will be discussed  
in a minute. These were found after a search warrant  
in a bedroom of your home in Hilton, New York. By  
statute such an offense carries a potential sentence  
of up to ten years in prison.

There was a thorough presentence -- excuse  
me, plea agreement. A plea was entered pursuant to  
the plea agreement, and the factual basis in this case  
unlike some others took two and a half pages of the  
plea agreement, and I've reviewed the plea agreement

1 but it sets forth clearly that Mr. Pattinson was  
2 convicted of a crime called domestic assault in the  
3 second degree in Missouri. He received a three year  
4 jail term there, was on parole; in fact, was a parole  
5 absconder when this event occurred. So that's the  
6 felony conviction that makes this possession of a  
7 firearm illegal.

8 As I mentioned, he possessed the two  
9 firearms at his home in Hilton. Appears from the  
10 factual basis that the firearms at his request were  
11 delivered to him by Mr. Oshier and another individual.  
12 The factual basis indicates the several efforts Mr.  
13 Pattinson made to obstruct justice by attempting to  
14 make it look like others possessed the firearms. He  
15 approached Ms. Pfenninger and Mr. Oshier to give false  
16 statements, create false affidavits, and this was an  
17 attempt to obstruct justice. Part of this scheme  
18 which is set forth in the factual basis was that Mr.  
19 Pattinson acknowledged that as a convicted felon he  
20 could not possess firearms but that the other two who  
21 had not been convicted felons would not get into  
22 trouble for possessing the guns.

23 The Court did order a full presentence  
24 report and I've received one, a very thorough report  
25 which was revised on January 21 of this year. There

1 are no surprises relative to the guideline  
2 calculation. The probation officer determined that  
3 the base offense level for this possession of weapons  
4 under 2K2.1a4A provides for a higher offense level  
5 because the felony involved that prohibited Mr.  
6 Pattinson from possessing weapons was a crime of  
7 violence. So that base offense level was 20 and the  
8 plea agreement the parties agreed under 3C1.1 of the  
9 guidelines there should be a two point enhancement for  
10 obstruction of justice. Mr. Pattinson did get the  
11 benefit of a three point reduction because he accepted  
12 responsibility and pleaded guilty. So the net is that  
13 the guideline calculation for the criminal history for  
14 there are of course six sentencing ranges, one through  
15 six. Mr. Pattinson is at not the mid range but just  
16 above the mid range at a level four. Therefore the  
17 sentencing guidelines are 46 to 57 months. That's the  
18 same range that as I say was anticipated by the  
19 parties in the plea agreement, so there's no surprise  
20 in that respect.

21 Of course, as the parties know, the  
22 Government has moved for the Court to impose a  
23 sentence higher than the guidelines. That motion was  
24 filed December 20, Docket Number 33. Mr. Slawinski  
25 has filed a response to that motion recently on April

1       6. I've reviewed them all carefully, but before we  
2       deal with discussion about that, Mr. Slawinski also  
3       filed back in early January objections to the items in  
4       the presentence report, and I think we should deal  
5       with that first.

6               I guess in the Government's motion for an  
7       upward departure, the Government responded to that --  
8       those objections as well. So I think, Mr. Slawinski,  
9       as you know that the rules seem to require me to make  
10      sure on the record the obvious, that you and your  
11      client have received the presentence report.

12             MR. SLAWINSKI: Yes, Judge.

13             THE COURT: All right. And Mr. Pattinson, I  
14      must ask you directly, did you receive the report and  
15      review it with your lawyer?

16             MR. PATTINSON: Yes, sir.

17             THE COURT: All right. I think at the risk  
18      of over -- well, the objections are really two in  
19      number. Mr. Slawinski, you've objected basically to  
20      all of the Facebook postings which were Paragraphs 38  
21      to 77 as well as Paragraph 20. You also objected to  
22      Paragraphs 88, 90 to 93 which talks about what I'll  
23      call the obstruction of justice conduct on the part of  
24      Mr. Oshier and Ms. Pfenninger, and then you do  
25      specifically make a sentencing recommendation and that

1 is that the Court stick to the 46 to 57 month  
2 guideline range.

3 So in reviewing your motion, it seems that  
4 the -- really the singular basis for the objection was  
5 that all of the Facebook stuff, and there are multiple  
6 paragraphs, that in your view it's all irrelevant to  
7 the crime that Mr. Pattinson pleaded to, that is  
8 possession of these two guns. Is that the essence of  
9 it?

10 MR. SLAWINSKI: Correct, Judge.

11 THE COURT: All right. And we'll deal with  
12 the matter relating to the activities of Mr. Oshier  
13 and Ms. Pfenninger in a minute but -- so there are no  
14 other objections?

15 MR. SLAWINSKI: That's correct, Judge.

16 It's --

17 THE COURT: Keep your voice up a little bit.

18 MR. SLAWINSKI: Oh, sorry.

19 THE COURT: That mic seems -- okay.

20 MR. SLAWINSKI: The postings by Mr.  
21 Pattinson were done at least two weeks before his  
22 arrest and -- or I'm sorry. At least two weeks before  
23 the finding of the firearms. It's our position that  
24 the postings and the messages do not relate to his  
25 actual crime of being a felon in possession of two

1 firearms.

2 THE COURT: Okay. Well, I just was trying  
3 to determine what the objection is and then I was  
4 going to let you -- give you a chance to argue it.  
5 You've already argued it. Anything else you wish --  
6 your papers thoroughly set forth your argument, but  
7 you certainly have an opportunity to say anything more  
8 you'd like about that.

9 MR. SLAWINSKI: No, and that is my argument,  
10 Judge.

11 THE COURT: Okay.

12 MR. SLAWINSKI: I'll note that the initial  
13 presentence report that was prepared did not have the  
14 paragraphs relating to the Facebook posts or the  
15 social media posts and then the second one did. I  
16 think it came on a day or two later, and it increased  
17 the PSR I think by double. The first one I think was  
18 about 17 pages and this one is 39 pages. So the bulk  
19 of the PSR are Mr. Pattinson's Facebook posts and his  
20 messaging on social media.

21 THE COURT: All right. Well, I acknowledge  
22 the new presentence report is some 39 pages long.

23 Mr. Harvey, do you wish to be heard in  
24 response to the argument that essentially I guess that  
25 the Court should strike or at least not consider all

1       those Facebook comments or rants?

2               MR. HARVEY: Sure. Judge, just very  
3       briefly. I did lay out in my original sentencing  
4       memorandum the rational for the Court's consideration  
5       of those Facebook posts as it relates to sentencing.  
6       Our position is that those posts are relevant to  
7       issues that are present before this Court in this  
8       proceeding. Specifically, they show the defendant's  
9       motive and intent in acquiring and possessing the  
10      firearms, and they also show his -- and illustrate his  
11      future dangerousness and his potential for recidivism  
12      which are all permissible purposes for such evidence  
13      to be presented at sentencing.

14             I will note that with respect to the  
15      Facebook posts both in the PSR and the Facebook posts  
16      and messages that are in my sentencing memorandum  
17      which supplement the PSR all of those posts or  
18      messages occurred during the three or four months  
19      leading up to the defendant's acquisition of the two  
20      firearms. So they weren't remote in time in relation  
21      to when he actually took possession of the .30-06  
22      rifle and the shotgun, and in fact, the one audio  
23      message that is referenced in I think Paragraph 77 of  
24      the PSR as included in full and the Government's  
25      sentencing memorandum on Page 9 I believe where the



1 defendant refers to killing at a genocidal rate and  
2 makes a reference to Josef Mengele. That conversation  
3 between the defendant and Mr. Oshier occurred on the  
4 day he took possession of the shotgun and the  
5 ammunition. So there's temporal proximity to all of  
6 these communications as they relate to the defendant's  
7 motive in taking possession of those firearms and  
8 ammunition.

9 THE COURT: All right.

10 MR. HARVEY: And I think with respect to the  
11 future dangerousness and potential recidivism, I think  
12 those are all bases for the court to consider those  
13 because if you look at the defendant's criminal  
14 history he has prior convictions which involve in some  
15 cases racial animus, in other cases actual violence  
16 and in other cases threats to kill. So I think this  
17 is all part of what this Court should be able to  
18 consider in determining those issues.

19 THE COURT: Mr. Slawinski, do you want to  
20 speak further about the paragraphs relating to Mr.  
21 Oshier and Ms. Pfenninger?

22 MR. SLAWINSKI: Yeah, Judge. Just to state,  
23 you know, we're not objecting to the attempted  
24 obstruction as it relates and as it's stated in the  
25 presentence report but we don't have any information

1 -- personal information of what Ms. Pfenninger and Mr.  
2 Oshier did after they talked to Mr. Pattinson. It's  
3 my understanding that there was an affidavit that was  
4 procured by Ms. Pfenninger and Mr. Oshier, but that  
5 was never submitted to the police.

6 MR. HARVEY: Judge, I'm going --

7 THE COURT: Mr. Harvey?

8 MR. HARVEY: Just on that note, Judge, I  
9 would note that Paragraph 5K of the plea agreement  
10 does include some of the facts that are set forth in  
11 the paragraphs from the PSR, so the defendant has  
12 effectively already admitted to some of the conduct by  
13 Ms. Pfenninger and Mr. Oshier as it relates to the  
14 obstruction. So there's probably a mootness argument  
15 there as well. So he's really already admitted the  
16 essential facts for finding that enhancement applies.

17 THE COURT: Yes. Doesn't seem to be  
18 anything new about the paragraphs in the plea  
19 agreement -- or on the presentence report since it was  
20 covered in the plea agreement.

21 MR. HARVEY: Right, in large part.

22 THE COURT: Well, Mr. Slawinski, I'm going  
23 to deny your motion to strike these paragraphs. I  
24 think they are relevant in several respects. First of  
25 all, the well known statute Section 3661 which covers

1 sentencing does provide that no limitation shall be  
2 placed on the information concerning the background  
3 character and conduct of a person convicted in the  
4 United States and may be received and considered for  
5 the purpose of imposing an appropriate sentence.

6 That's sort of a baseline principle. In fact, much of  
7 it doesn't have to be technically admissible if it has  
8 to have some indicia of reliability, but I think these  
9 Facebook statements are relevant for several purposes.  
10 There's many references to getting firearms. I  
11 counted about seven; Paragraph 51, 58, 59, 62, 65, 74  
12 were references by Mr. Pattinson with others to get  
13 guns and for sort of a particular purpose. It wasn't  
14 to go duck hunting either. It was to be prepared in  
15 references to this holy war. So I think to the extent  
16 there are two firearms offenses here, you know, if  
17 someone were charged as a felon of possessing firearms  
18 but he said to me, "Judge, I was just going to use  
19 them to go duck hunting with my nephew, "that seems to  
20 me to be far different from why these weapons were  
21 procured.

22 Second, there were admission on some of  
23 these Facebook statements or rants, in Paragraph 56  
24 specifically where he admits that he can't possess a  
25 firearm. One of his cohorts asked him that and he

1       said no, I can't. Also, there's a reference in the  
2       Facebook Paragraph 57 which suggests Mr. Pattinson  
3       didn't care much about the law or he was talking about  
4       if he shot someone he didn't care about the law was  
5       important.

6               As to the information about Mr. Oshier and  
7       Ms. Pfenninger, Paragraphs 88 to 93, I think these  
8       just corroborate and really duplicate information that  
9       Mr. Pattinson agreed to in the plea agreement. It's  
10      really nothing new. And I think finally all of these  
11      Facebook matters, or many of them, they do express a  
12      certain I would say white supremacist, racist  
13      philosophy, but it references other things that I  
14      think are truly germane to sentencing. I understand a  
15      person can have white supremacist views and support  
16      Nazi philosophy and use racist language. That's not  
17      what Mr. Pattinson is being sentenced for even though  
18      those statements are offensive and repugnant.

19             So I think these statements in the Facebook  
20      pages they refer to many things that I think are  
21      germane in the Court's ultimate decision. They refer  
22      to firearms, assaults or potential assaults on the  
23      protestors that were protesting during the Summer of  
24      2020. They relate to the use of violence, all of  
25      which I think may be factors for this Court to

1 determine in terms of the ultimate sentence. I mean,  
2 the Facebook postings talk about shooting Antifa  
3 people, Paragraphs 45 and 57, some reference to Mr.  
4 Pattinson beating up such a person, Paragraph 48,  
5 statements that we should slaughter anybody bringing  
6 communism into the country, threats to kill people if  
7 they came into his neighborhood presumably in Hilton  
8 and statements that this just doesn't mean to fight  
9 them but to shoot them, pump shells through their  
10 head.

11 So I deny your request to strike those  
12 because for the reason that I stated I think they're  
13 relevant and within the broad scope of information the  
14 Court can determine whether the sentence should be  
15 within the guidelines, less than the guidelines or  
16 more than the guidelines. The rules require that I  
17 first off make a determination as to what the  
18 sentencing guidelines are, and the plea agreement the  
19 parties opined what it should be. The presentence  
20 report has determined that, and I make a determination  
21 that the appropriate sentencing guidelines with the  
22 criminal history category four is the 46 to 51 months.

23 MR. HARVEY: Judge, I think it's 46 to 57.

24 THE COURT: What did I say?

25 MR. HARVEY: I think you said 46 to 51.

1 THE COURT: No, no. Yup. You're right. 46  
2 to 57. I misspoke.

3 MR. HARVEY: Thank you.

4 THE COURT: Let me just find one other note  
5 here before we proceed. As I indicated at the outset,  
6 Mr. Harvey on behalf of the Government has requested  
7 that the Court impose a sentence greater than the 46  
8 to 57. I would just note that the plea agreement I  
9 believe it was Paragraph 13 the parties agree to the  
10 correctness of the guideline calculation but both  
11 reserve the right to seek a sentence outside the  
12 guidelines, and the plea agreement also referenced the  
13 well known fact that regardless of what the guidelines  
14 are the Court is not bound to accept them but the  
15 Court has to make its own determination.

16 So let's get to the decision itself here.  
17 I've indicated what the guidelines are. I should  
18 indicate that attached to your objection to Mr.  
19 Harvey's request for an upward departure you also  
20 included a statement written by Mr. Pattinson, a two  
21 page statement which I acknowledge receipt of. So I  
22 think it's time for counsel to speak to the matter.  
23 Mr. Pattinson, you also have a right to address me,  
24 the sentencing judge. I have carefully reviewed your  
25 letter. You don't have to make a statement, but if

1     you wish to, you can. I guess, counsel, in your  
2     remarks and you both know this since you've appeared  
3     before me scores of time but I think that there's a  
4     statute that affects the Court's sentence and that's  
5     the so-called sentencing statute, Section 3353A. Mr.  
6     Harvey sort of tripped through that on his discussion.  
7     And I think those sections and there are seven or  
8     eight are crucial in every sentence but they certainly  
9     are here. The Court is directed to look at the nature  
10    and circumstances of the crime. The Court is directed  
11    to look at the history including the prior record and  
12    characteristics of this defendant. The Court is  
13    directed to consider the need for this sentence to  
14    reflect the seriousness of the offense, to promote  
15    respect for law, to provide just punishment,  
16    importantly to provide adequate deterrence and also  
17    importantly to protect the public from further crimes  
18    by the defendant. So I think that certainly tryst for  
19    counsel's discussion.

20           In addition to those factors, the sentencing  
21    statute also says the Court should consider and avert  
22    to the policy statements of the guidelines, and that  
23    suggests at least one and maybe two of the guideline  
24    sections may be germane here. First is 4A1.3 of the  
25    guidelines which talks about under 4A1.3A1 a standard

1 for considering an upper departure and that teaches  
2 and I quote if reliable information indicates that the  
3 defendant's criminal history category substantially  
4 under represents the seriousness of his criminal  
5 history or the likelihood that the defendant will  
6 commit other crimes, an upward departure may be  
7 warranted. So I think this has often been used and  
8 must be used. 5K2.0 talks about whether there should  
9 be some departure or reasons not sufficiently  
10 considered by the framers of the guidelines. But I  
11 think my focus has been on the statute, Section 3553E  
12 -- A rather and 4A1.3 which talks about the standard  
13 for the upward departure and there's also some  
14 guidances to how the Court might examine that.

15 So I guess I would turn it over to counsel  
16 at this point. Mr. Harvey, since you made the motion  
17 I guess I will let you go first. Trust me, I have  
18 read your paper numerous times and Mr. Slawinski's  
19 response so it's not necessary to repeat everything in  
20 there but you may proceed.

21 MR. HARVEY: Thank you, Judge. As Your  
22 Honor noted, the Government has requested an above  
23 guideline sentence of 120 months imprisonment which is  
24 the statutory maximum. The Government understands  
25 that that's a significant above guideline sentence,



1 basically double the range, but I think it's warranted  
2 in this case, and it is not greater than necessary to  
3 achieve the objective of sentencing set forth in  
4 Section 3553A. As I've detailed in my sentencing  
5 memorandum, that sentence from my perspective is  
6 justified by the nature and circumstances of this  
7 offense, this defendant's criminal history and  
8 characteristics and the defendant's awful performance  
9 while under supervision for previous criminal  
10 convictions. We've touched upon some of that already  
11 in the argument on the Facebook post, Judge, but I  
12 think it's fair to say that this is a serious case.  
13 It involves the illegal possession of firearms and  
14 ammunition by a convicted violent felon. The history  
15 of racial animus and the history of adherence to white  
16 supremacist ideology. For those -- the reasons that  
17 I've stated earlier the Facebook posts are important  
18 in this case, although not the only thing that's  
19 important but they are importantly in this case  
20 because they tell this Court why the defendant took  
21 position of the rifle and the shoot gun and the  
22 ammunition, and as Your Honor knows, I've gone through  
23 chapter and verse both in my sentencing memorandum and  
24 also the PSR about the various racialized threats that  
25 this defendant made over Facebook during the three or

1 four months leading up to his possession of these  
2 weapons and I'm not going to repeat them here in court  
3 because Your Honor is well aware of them and they  
4 obviously show an aberrant ideology by this defendant,  
5 but it's not for his ideology or his political beliefs  
6 or racial beliefs I'm asking the Court to consider  
7 those posts. It's to show why he possessed the gun  
8 and to show that purpose was not defensive but was  
9 offensive, and I think the best illustration of that  
10 is the last Facebook message that is summarized in my  
11 sentencing memorandum which is on Page 9 at the bottom  
12 of Page 9, and I'm just reading a pertinent part only,  
13 Judge. The part that's highlighted for the Court in  
14 the memorandum, it reads as follows: "Go ahead,  
15 nigger. Defund the police so I can just start fucking  
16 murdering you all in a genocidal rate by fucking  
17 myself. They'll be calling me the angel of death.  
18 They'll be calling me the new Josef Mengele." I think  
19 that shows, Judge, that this defendant contrary to  
20 what was set forth in his sentencing memorandum did  
21 not possess these guns or ammunition for a defensive  
22 purpose only. A fair reading of that transcript, of  
23 that audio message indicates that he possessed them in  
24 an offensive posture and if anybody either African  
25 American or Antifa related came onto his street in his

1 neighborhood he was going to kill them all. So I  
2 think it's something the Court should consider very  
3 strongly in determining the nature and seriousness of  
4 the offense that he's pled guilty to.

5 With respect to his criminal history, as I  
6 alluded to earlier, he has four prior criminal  
7 convictions, one felony from 2016 and three prior  
8 misdemeanors. All of them -- or excuse me, some of  
9 them include aggravating factors such as the  
10 following. Threats to strike and choke his girlfriend  
11 and drown her to death and have someone shoot her in  
12 the face. Threats to kill everyone in a house and to  
13 kill himself before he goes back to prison. Others  
14 involve yelling white supremacy and racial slurs and  
15 ripping down a Mexican flag from somebody's personal  
16 property, and another involves calling a victim a  
17 racial slur and then damaging and menacing a person  
18 after doing so. These convictions taken together  
19 especially with the Facebook posts and messages that  
20 we've discussed show this defendant's capacity for  
21 violence and his willingness to commit racially  
22 motivated criminal conduct, and I think it really  
23 colors the background here as to why he possessed  
24 these two weapons in this case illegally. And I think  
25 as I mentioned earlier I think that really illustrates

1 a couple of things as it relates to the 3353A factors.  
2 It illustrates this defendant's disregard for the law.  
3 He shows no respect for the law in anything he does.  
4 He has all of those convictions but keeps coming back  
5 to the same thing, continues to espouse this ideology,  
6 continues to commit criminal conduct, ignores orders  
7 of the court whether it relates to parole or probation  
8 in his cases. So it really shows a high level of  
9 disregard for the law and a significant chance of  
10 recidivism by this defendant in the future, and I  
11 think that does tie into not only the 3553A factors  
12 but also as Your Honor referenced Section 4a 1.3  
13 relating to unrepresenting criminal history category.  
14 This defendant has a criminal history category four  
15 which is not the highest category, but those  
16 convictions taken together with his statements about  
17 his disregard for the law show that has had no  
18 intention of living a law abiding life regardless of  
19 what this court does. So I think it's necessary for  
20 this Court to send a message to this defendant that  
21 this conduct will not be tolerated going forward and  
22 to impose a maximum sentence to prevent him from  
23 engaging in this type of conduct in the future.

24 I will note a couple of other things, Judge.  
25 In addition to the possession of a weapon and the

1 Facebook posts and messages, I think it shouldn't be  
2 lost on this Court that the defendant did try to  
3 obstruct justice in this case and in doing so involved  
4 his girlfriend and the mother of his children in the  
5 process and has put her in legal jeopardy because  
6 she's charged here in federal court with offenses  
7 relating to that obstruction. I think the sentencing  
8 memo and PSR speak for themselves on that issue, but  
9 that's an aggravating factor that should not be lost  
10 on this court in determining an appropriate sentence.  
11 With respect to one of the other arguments made by  
12 defense counsel in their sentencing memo they tried to  
13 draw parallels between this defendant and Mr. Oshier  
14 who pleaded guilty to transferring a firearm to a  
15 convicted felon and is facing a different sentencing  
16 range for this defendant. I just wanted to clarify a  
17 few things for the Court with respect to those  
18 differences between the plea agreements. Mr. Oshier  
19 is not similarly situated to this defendant. They're  
20 completely different. Mr. Oshier has no criminal  
21 history category. This defendant has a criminal  
22 history category four with a high likelihood of  
23 recidivism. There are differences in their guidelines  
24 calculations. For example, Mr. Oshier was a base  
25 offense level of 14 because that is the base offense

1 level for transferring a firearm to a convicted felon  
2 while this defendant is a base level 20 due to his  
3 prior violent felony conviction. In addition, Mr.  
4 Oshier's plea agreement provided for a five level  
5 upward departure for him based on the danger to the  
6 community presented by him giving the shotgun and the  
7 ammunition to the defendant knowing that the defendant  
8 intended -- or wanted the firearm for the purpose of  
9 among other things shooting minorities and Antifa  
10 protestors.

11 And finally this defendant is getting an  
12 upper adjustment for obstruction of justice based on  
13 his plan to give the false affidavits to frustrate  
14 this prosecution and Mr. Oshier did not qualify for  
15 such an enhancement. So there is no fair comparison  
16 between Mr. Oshier's plea agreement and the plea  
17 agreement entered by this defendant. So Judge, unless  
18 you have any further questions about my submissions or  
19 my arguments I believe that the sentence we've  
20 requested complies with the objectives of Section  
21 3553A and is a just and appropriate sentence in this  
22 case.

23 THE COURT: All right. Thank you. Mr.  
24 Slawinski, as you know, you can also make a statement  
25 if you wish. I have read your thorough written

1 report. Mr. Pattinson may also speak. I'll turn it  
2 over to you and you can decide who goes first, I  
3 guess.

4 MR. SLAWINSKI: Thank you, Judge. Judge, I  
5 think first and foremost the Court needs to consider  
6 the crime in this case and that crime is that Mr.  
7 Pattinson possessed both a rifle and a shotgun in his  
8 home in Hilton, New York. The shotgun and rifle were  
9 retrieved while Mr. Pattinson had already been in jail  
10 for two weeks after he was arrested for his Missouri  
11 warrant and for coming back here to be with his fiancé  
12 and the mother of his child who has since been born  
13 since he's been in custody.

14 THE COURT: Since what? I didn't hear you.

15 MR. SLAWINSKI: Oh. The mother of his  
16 child. He had a child born while he has been in  
17 custody.

18 THE COURT: Okay.

19 MR. SLAWINSKI: The child is now a year and  
20 a half -- almost a year and a half old. So the Court  
21 should consider the crime in this case, and this is a  
22 fairly common crime that you see in federal courts  
23 that being a 922G. The firearms involved did not have  
24 a large capacity. They were not machine guns. They  
25 were not semi automatics. They were simply a rifle

1 and a shotgun.

2 The reason that Mr. Pattinson had these  
3 firearms is that he knew that he was going back to  
4 jail sooner or later. He knew that the Missouri  
5 warrant was going to catch up with him, and he wanted  
6 his fiancé, his girlfriend and their children to be  
7 safe when he did that. So he did procure the weapons,  
8 he admitted to that, for their safety, and he did this  
9 in the Summer of 2020. As the Court will recall in  
10 the Summer of 2020 there were a lot of protests in  
11 Rochester about Black Lives Matter, and there were  
12 people on both sides protesting and counter  
13 protesting. Now, Mr. Pattinson was paying attention  
14 to the protests, took part in some of the counter  
15 protests and was very concerned that the violence  
16 would spill over to his neighborhood in Hilton. Now,  
17 whether that concerns --

18 THE COURT: Which is a long way from  
19 Rochester.

20 MR. SLAWINSKI: It is. Correct, Judge.  
21 There's no evidence that he went into Rochester with  
22 any weapons to cause a may lay, to cause violence. He  
23 was concerned about himself and his family. Now, you  
24 know, his beliefs, you know, notwithstanding, you  
25 know, that was his main concern, and the Court, you



1 know, could find his beliefs, his racial beliefs  
2 repugnant and disgusting, but still, they're protected  
3 by the first amendment and should not play any part in  
4 his sentence. So the text and the Facebook messages  
5 and the social media posts were in themselves  
6 defensive. They were not offensive, and he was  
7 worried that his family was at risk while he was going  
8 to be in jail.

9 The reason that he has a criminal history  
10 Category Four was that -- Mr. Harvey did detail his  
11 prior criminal history but he did escape. He walked  
12 away from custody in Missouri to come up here because  
13 he was not being given the opportunity to come up here  
14 and be with his family. He had no ties in Missouri.  
15 He had asked them several times so he came up here to  
16 Hilton to be with his family. He put two requests in  
17 and they were both denied, so he did take it upon  
18 himself to come up here. He admits that and he  
19 stepped responsibility for that just like he's  
20 accepting responsibility for possessing the firearms.

21 Again, the firearms were found two weeks  
22 after he had been arrested for the Missouri warrant,  
23 and there was never any allegation that Mr. Pattinson  
24 was violent during the Black Lives Matter protests,  
25 that he assaulted anyone, and I think the Government

1 even state that's in their sentencing memo. There was  
2 also an issue of Mr. Pattinson's address being on the  
3 internet so people knew where they lived. That's  
4 where Ms. Pfenninger lived with their two children.

5 So a lot of this, you know, bloomed or  
6 blossomed from the racial protests and the Black Lives  
7 Matter protests in 2020. It's correct that Mr.  
8 Pattinson does have a criminal history category of  
9 four. That is the middle of the road here. I don't  
10 think that criminal history category is too low for  
11 somebody like Mr. Pattinson. The Government is well  
12 aware that the Court sees people with far more violent  
13 crimes and priors in their past and they don't object  
14 to their criminal history being too low. I think that  
15 if the Court were to which we're obviously arguing  
16 against it would pour gasoline on this fire on the  
17 internet. It would say, you know, we're punishing Mr.  
18 Pattinson for his views, for his racial views, and the  
19 people who harbor those views I think would be ignited  
20 by a sentence that will go above and beyond. I think  
21 that they will say it will be unfair that Mr.  
22 Pattinson is being sentenced that way just because of  
23 his beliefs. SO the Court should consider that. The  
24 Court should also consider the fact that, you know, if  
25 you send Mr. Pattinson to prison and believe that he

1 is a white supremacist, that's just going to fester.  
2 The longer he's in prison the more he's got to be  
3 indoctrinated and he's going to come out at some point  
4 even worse, and the Government hasn't offered any  
5 solution as to how to deal with that because at some  
6 point he will be released from prison. We think that  
7 because of the 3553A factors that should be sooner  
8 rather than later. I'll note that the Government is  
9 asking for double what the high end of the guideline  
10 sentence is here. I think that that's truly uncalled  
11 for in this case, and I think a lot of it has to do  
12 with Mr. Pattinson's racial animus here and not the  
13 crime for the person himself. I think, you know,  
14 obviously Mr. Pattinson does have a criminal history  
15 but if he's placed on supervision if he were to screw  
16 up or violate, you know, that would be appropriate and  
17 he would receive appropriate punishment at that time,  
18 but I don't think that an upward departure of double  
19 the guideline -- of double the guideline range here is  
20 called for.

21 I did say that Mr. Pattinson is the father  
22 of two children. His newborn, who is a year and four  
23 months, he just got to see recently. Ms. Pfenninger  
24 the codefendant in the obstruction issue gave birth  
25 shortly after Mr. Pattinson went into prison and he

1       only saw -- he's only had the opportunity to see her  
2       one time. I don't think the Court should treat this  
3       like any other 922G1 case. The guns at issue were not  
4       being used in drug trafficking. They weren't being  
5       used in a robbery. They weren't being used in a crime  
6       of violence. They were simply being used to protect  
7       Mr. Pattinson's girlfriend and their children. Now,  
8       whether it was reasonable or not, you know, that's  
9       another question, but there's no evidence to show that  
10      Mr. Pattinson had any offensive -- had any offensive  
11      motive in possessing these firearms.

12               So for all of those reasons, Judge, and for  
13      the reasons I stated in my sentencing memo and  
14      response to the Government's memo, I would ask for a  
15      guideline sentence in this case. Thank you.

16               THE COURT: All right. Thank you. Mr.  
17      Pattinson, you also as I've said several times have a  
18      right to speak to me if you wish. You don't have to  
19      because you have written a letter that I have already  
20      mentioned but anything you would like to say before  
21      the Court pronounces the sentence? And just keep your  
22      voice up because I don't hear too well.

23               MR. PATTINSON: I would just like to  
24      apologize for bringing this all in play here. I think  
25      a lot of things got taken a lot further than they

1       should have and I definitely accept my responsibility  
2       and stupidity for what I have done, and I apologize to  
3       the Court for that.

4               THE COURT: All right. Thank you. As I  
5       mentioned several times, the courts no longer can just  
6       impose the sentence in their heart that they think is  
7       right. Back when I started being a judge over 35  
8       years ago that was the case. But now we have  
9       sentencing guidelines that are supposed to grade some  
10      uniformity and consistency in sentencing both for  
11      those who are offenders and for the community, but  
12      there are vehicles and ways that a court can either  
13      adhere to the guidelines or sentence below or above  
14      the guidelines. And I think the place to start as  
15      both parties seem to recognize is the factors, and I  
16      must say, Mr. Pattinson, in looking at those factors  
17      you don't come out too well in any of them in terms of  
18      the nature of the offense, the history and  
19      characteristics of your background, the need to  
20      provide deterrence and frankly to protect the public.

21             Dealing first with the nature of the  
22      offense, a convicted felon possessing firearms is a  
23      danger. Congress has said it's so dangerous that it  
24      subjects you to up to ten years in prison. Your  
25      lawyer and you have suggested that you obtained those

1 weapons for protection of your family. As far as I  
2 know, there's no evidence that your family was  
3 threatened in Hilton which is many, many, many miles  
4 from where the protest occurred downtown, but if you  
5 carefully look at the Facebook references that have  
6 been cited by the Government and I referenced, a lot  
7 of the references are to getting guns for you if  
8 necessary to use and you talk about shooting people  
9 and threatening to shoot people. You know, your views  
10 about white supremacy and Nazi views, racist language,  
11 they sort of factor in too when one considers the  
12 purpose for possessing the guns. Reading the  
13 Facebook, possessing those guns and obtaining them  
14 seemed to relate pretty closely with objections and  
15 disagreement with the protestors that were protesting  
16 in various parts of the city.

17 But the next area is the history and  
18 characteristics of you and that forces us to look at  
19 your criminal history category which is a four, and  
20 except for one prior conviction, all of them seem to  
21 have demonstrated aspects of the use of violence and  
22 many with the racial undertone or animus. The crime  
23 that does not seem to involve that is your crime of  
24 driving while intoxicated. According to the  
25 presentence report, police tried to pull you over.

1 You ignored them, led them on a high speed 80 mile an  
2 hour chase. Now, that might not relate to racial  
3 animus, but it certainly seems to show a lack of  
4 respect for the law and putting others in danger.

5 But look at some of your other records.  
6 Admittedly, this was some time ago back in 2009 you  
7 pleaded guilty to menacing, criminal mischief and a  
8 hate crime. You received three years probation but  
9 then this seems so typical of many of the things  
10 you've said and done. You know, a neighbor who  
11 happened to be African American complained at the  
12 residence you and others were in the music was too  
13 loud, and in addition to calling him nigger, you and  
14 others broke his lawn furniture, throw it at his  
15 house. Uncalled for. Reprehensible. You're on  
16 probation and the allegations are numerous that you  
17 engaged in additional conduct, in threats, engaged in  
18 a threat to kill another person, failed to pay  
19 restitution, failed to complete drug and alcohol  
20 treatment. So that's where we start.

21 A few years later you were -- pleaded guilty  
22 to criminal mischief in the fourth degree, received a  
23 very modest jail time. Records there indicate that  
24 you and another were walking through the Town of East  
25 Rochester yelling statements about white supremacy and

1 then you approached a woman who happened to be  
2 Hispanic. In addition to calling her a spic, you  
3 ripped down the Mexican flag she had on her porch and  
4 punched her or pushed her in the face and told her "to  
5 go back to Clinton" which I assume maybe had some  
6 reference to President Clinton.

7 Next, the very serious felony assault  
8 conviction, domestic assault where you received a  
9 three year sentence, and I almost lost count of the  
10 times the violation of parole was issued, at least  
11 three times, and you eventually absconded, but the  
12 facts of that case also demonstrate a terrible  
13 propensity for violence. Now you grabbed this  
14 described as your girlfriend, choked her so that she  
15 stopped breathing, threatened to drown her and then  
16 when arrested yelled that he was going to have someone  
17 come and shoot her in the face.

18 You didn't do too well when you were sent to  
19 the Missouri facilities either. There were at least  
20 eight disciplinary infractions there, many of them  
21 seemed to involve fights and violence, engaging in  
22 physical structure -- struggle three or four times,  
23 threats, failing to comply with an order. Last  
24 conviction 2019 pled guilty to menacing in the second  
25 degree, a weapons charge, received a modest jail



1 sentence, but there too you were enjoying yourself as  
2 well as with others at a pub in Buffalo, began using  
3 racial slurs, kicked out of the pub and while outside  
4 proceeded to destroy parts of an individual's --  
5 presumably a friend's truck, grabbed jewelry from one  
6 of the women's neck, pulled out a knife and said, you  
7 know, I'm going to kill everybody in this house if I  
8 go back to jail. You know, you receive points under  
9 the guidelines. You know, you commit a felony, you  
10 get three points. You get misdemeanor, you get one.  
11 You received points for all of those except maybe the  
12 earliest one, but where I think maybe the record here,  
13 your criminal record of four doesn't adequately  
14 reflect the seriousness of the offense is that, you  
15 know, these were crimes of violence. Many of them  
16 tinges of racial animus. That's different from  
17 another misdemeanor, petty larceny. You know, you  
18 stole ten dollars worth of food from a store, you get  
19 one point, but these offenses you also get a point but  
20 they seem to involve much more serious conduct and  
21 frankly the likelihood that you might do something  
22 again like that. There did not appear to be any  
23 willingness or ability on your part to stop this  
24 conduct. You know, there's a pattern here. Respect  
25 for the law is another thing the Court must consider,

1 and I don't know how I can find that in your case.  
2 You've been repeat violations of probation, numerous  
3 violations of parole. You skipped out on parole in  
4 Missouri. You did what you wanted to do. You wanted  
5 to come here. 80 mile an hour flight from the  
6 officers on a DWI clearly doesn't demonstrate much  
7 respect for law. Statements on Facebook that you knew  
8 you couldn't possess a gun but you did it anyway. You  
9 know, you didn't care if it violated the law. I think  
10 this sentence has to demonstrate that there must be  
11 some respect for law.

12 I carefully reviewed your statement and you  
13 expressed some remorse. I quote you said "I couldn't  
14 believe some of the stupid crap I was saying." Well,  
15 I might agree with you that it was stupid, but you've  
16 done it numerous times. You claim you were just  
17 talking a big game and really didn't mean any of this,  
18 but you know, it's easy now that you stand before a  
19 sentencing judge to have remorse and to say you're not  
20 going to do it again and there was some justification.  
21 Someone brought to my attention a quote which I think  
22 applies to some extent here. You may not be familiar  
23 with the African American -- famous African American  
24 poet and play writ, author, civil rights activist who  
25 actually spoke at President Clinton's inauguration.

1 My guess is that's not someone whose works you follow  
2 very closely, but she's often quoted as saying the  
3 following which I think applies here, especially in  
4 light of your statement, and she said and I quote  
5 "When somebody shows you who they are, believe them  
6 the first time." When someone shows you who they are,  
7 believe them the first time. And Mr. Pattinson, I  
8 think you have shown us repeatedly who you are, what  
9 you're capable of based on your prior record and your  
10 numerous statements and rantings on Facebook. So your  
11 letter on the eve of sentencing does not mitigate that  
12 in my view very much at all. Violence seems to be  
13 your middle name. In fact, the presentence report  
14 reflects that you have a tattoo on your hand that says  
15 that word, violence. So that seems to be your creed.  
16 So I'm not convinced that your online threats of  
17 violence against people and property were idle ones.  
18 Your history includes crimes of violence, menacing,  
19 hate speech, race based harassment, trespass, using  
20 racial slurs, threatening to have people killed. The  
21 defendant's online embrace of Nazi ideologies, threats  
22 to engage in violent attacks, connection with a race  
23 war, claims actually that you did assault several  
24 protestors involved in the 2020 protests, strongly  
25 suggest to me the likelihood that you would and could

1 offend again.

2 Certainly, the first amendment protects your  
3 right to engage in such in the Court's view repugnant  
4 statements that are incompatible with a democratic  
5 society. They relate frankly to the likelihood you  
6 might commit offenses again. Admission of your  
7 beliefs may then properly be considered to the extent  
8 they indicate future dangers in this courtroom that  
9 mitigating evidence. In my view, sir, the factors  
10 that I've discussed here they do warrant a sentence  
11 above the 46 to 57 month guideline range. The  
12 Government seeks the maximum sentence here. The Court  
13 believes it must follow the policy statement under  
14 4A1.3. There have been numerous shootings around this  
15 country in the past years and many times people ask  
16 the question, you know, were there any warning signs  
17 or were there any red flags? I must say, sir,  
18 fortunately you did not engage in such conduct, but if  
19 so, the warning flags just jump out at you here in  
20 terms of racial animus and prior violence. In my view  
21 under 4A1.3, I think your criminal history four does  
22 under represent the seriousness of your prior record  
23 and the likelihood that you could commit other crimes.  
24 I mentioned already, as Mr. Harvey has, your criminal  
25 record which involves racially tinged violence but

1 violence -- numerous violence -- acts of violence. It  
2 just seems to me, Mr. Pattinson, when things don't go  
3 your way especially in view of your world view, you  
4 react violently. You don't just disagree with people.  
5 You call them names. You engage in violence. You get  
6 upset at your girlfriend, you choke her and threaten  
7 to kill her. You get upset when somebody asks you to  
8 lower music, you destroy his property. You see a  
9 Spanish person you don't like in East Rochester, you  
10 assault her and call her names. You know, I don't  
11 know why the Court and the community has to accept  
12 this. You have shown who you are. You have been and  
13 I think are a danger, sir. You repeatedly engaged in  
14 behavior frankly of a thug. You've obtained weapons  
15 illegally. I think you obtained them as part of a  
16 racist agenda. You've been convicted of violent  
17 crimes in the past, not just non violent crimes. You  
18 failed to follow directive of courts in terms of  
19 probation and supervised release. You threatened to  
20 kill and shoot others, and you just don't -- you just  
21 don't get a pass here, Mr. Pattinson.

22 So for all these factors, I've tried to  
23 follow the policy statement which teaches you to look  
24 sort of sequentially at the criminal history category.  
25 Mr. Pattinson has a criminal history category four.

1 The courts also say you don't have to go through a  
2 mechanistic formula, but you should say well, would  
3 criminal history five better reflect the criminal  
4 history or a six, and I believe in this case criminal  
5 history at the top which is six is applicable, and  
6 I've gone up two offense levels too from a 19 to a 21.  
7 All this means is that range would be 77 to 96 months.  
8 The Government has asked for a greater departure, but  
9 the Court hereby after all these factors which I've  
10 tried to articulate an upward departure of 96 months,  
11 and that is the sentence I hereby impose upon you.  
12 This is over three years more than the top of the  
13 guideline range, but I think it's absolutely justified  
14 in this case, sir. I mentioned Maya Angelou. You  
15 might actually learn something by reading some of what  
16 she has written. You claim in your letter to me that  
17 you're going to take classes in jail, and I think  
18 you've got a lot of things to deal with, anger  
19 management frankly being one of them. So for the  
20 reasons I said as I tried to articulate my feeling  
21 here, I hereby commit the Stephen Pattinson to the  
22 custody of the Bureau of Prisons and the Attorney  
23 General for a period of 96 months. I depart -- I  
24 grant the Government's motion and depart. When you  
25 finish your bid, finish your sentence, I place you on

1 supervised release for a period of three years, and  
2 these are most crucial, sir. If you show the same  
3 disregard for these conditions, you're going to be  
4 back in front of me or some other judge and you could  
5 continue your stay in jail and your children will be  
6 much, much older. While on supervised release in part  
7 you can't possess, use, distribute any illegal drugs.  
8 You can't possess a firearm or even a bullet. You  
9 must submit to random drug testing and you must  
10 cooperate in the collection of a DNA sample for the  
11 probation office, and the presentence investigation  
12 report listed several recommended special conditions.  
13 I adopt most of them, specifically recommendation  
14 number one that while on supervised release you  
15 participate in a program for substance abuse including  
16 testing and treatment according to the exact language  
17 in that recommendation. I also direct recommendation  
18 number two that you participate in a mental health  
19 treatment program including a mental health evaluation  
20 and treatment and comply with any program directed by  
21 your probation officer according to the specific  
22 language of this recommendation. You also -- I order  
23 you to submit to a search of your person, property,  
24 vehicle, place of residence to make sure you're  
25 complying with these conditions and not possessing

1 guns or weapons. You must notify probation of any  
2 opiate based pain medication before the prescription  
3 is filled. Looking at the presentence report, you've  
4 had history of drug abuse and use in your past, not so  
5 much recently but in your past. Next, you must comply  
6 -- and that's listed in paragraph 148 of the  
7 presentence report. Next, you must comply with all  
8 orders of protection issued against you and there have  
9 been several. I've reviewed your financial  
10 circumstances and I declined to impose a fine in this  
11 case. I do -- I must order a \$100 special assessment  
12 which is due immediately and will be withdrawn from  
13 any monies you receive according to the Bureau of  
14 Prisons financial responsibility program. There was  
15 the firearms. There was a provision in the plea  
16 agreement that they would be forfeited, and I ordered  
17 that forfeiture. Those firearms will not be returned  
18 to you or anyone else. Two --

19 MR. HARVEY: Your Honor, I'm sorry to  
20 interrupt, but that forfeiture includes the shotgun  
21 ammunition as well.

22 THE COURT: I thought I said that, but yes.  
23 The shotgun and ammunition.

24 MR. HARVEY: Thank you.

25 THE COURT: Two other things. I don't think



1       there was another count on the indictment.

2               MR. HARVEY: There was not, Judge.

3               THE COURT: All right. I don't know, Mr.  
4       Slawinski, if there's any recommendation that this man  
5       serve his sentence in any particular locale.

6               MR. SLAWINSKI: Yes, Judge. As close to  
7       Rochester as possible to maintain --

8               THE COURT: All right. I'll order -- or  
9       I'll ask the Bureau of Prisons to do that, and of  
10      course, it's up to the Bureau of Prisons. I should  
11      say Mr. Pattinson will get credit for the time he has  
12      been in custody. I think he lapsed in the federal  
13      custody after the parole matter was taken care of in  
14      Missouri. Next appeal on the plea agreement did  
15      provide that Mr. Pattinson gave up or waived his right  
16      to appeal if the sentence was within the guideline  
17      range. This sentence obviously is not within the  
18      guideline range, so he does have a right to appeal.  
19      Mr. Slawinski, that appeal must be filed within 14  
20      days of the judgment which will be when I sign the  
21      document which will occur in a day or so. Can I trust  
22      you to file the notice of appeal?

23              MR. SLAWINSKI: Of course, Judge.

24              THE COURT: All right. If not, certainly if  
25      that doesn't happen and I'm sure it will, Mr.

1 Slawinski will do that, but if not, Mr. Pattinson, you  
2 can ask the Court to make sure the appeal gets filed  
3 and I will take care of that, but I have confidence in  
4 Mr. Slawinski.

5 So Mr. Pattinson, this has not been a pretty  
6 picture. You've shown yourself who you are and I  
7 don't know, prison certainly can harden one's views,  
8 but I have had some success stories where individuals  
9 go in hardened, angry and bitter but the Bureau of  
10 Prisons does have programs to make your future better.  
11 You have no high school degree, no GED. You know,  
12 your prospects for getting a job, which you don't have  
13 now, are pretty slim. So it's up to you. You could  
14 spend your time feeling sorry for yourself and in the  
15 weight room or doing something positive. That's the  
16 sentence. Thank you.

17 MS. FISH: Judge, if I may just clarify  
18 briefly. The Court granted an upward departure for  
19 inadequacy of criminal history from a category four to  
20 a six. We went from a total offense level of 19 to a  
21 22. I just want to clarify that as a variance under  
22 the 3553A factors.

23 THE COURT: 19 to 21 is what I said.

24 MS. FISH: Sorry. I misread that. 19 to a  
25 21, and that's a variance under the 3553A factors that

1 the Court detailed on the record.

2 THE COURT: That's what I did.

3 MS. FISH: Okay. Thanks, Judge.

4 (Proceeding concluded at 3:23 p.m.)

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**CERTIFICATE OF COURT REPORTER**

I certify that this is a true and accurate  
record of proceedings in the United States District  
Court for the We stern District of New York before the  
Honorable David G. Larimer on May 23, 2022.

S/ Brandi A. Wilkins

Brandi A. Wilkins

Official Court Reporter